

AMENDED IN SENATE JULY 13, 2009

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 501**

---

---

**Introduced by Assembly Member Emmerson**

February 24, 2009

---

---

An act to amend Sections 2054 and 2435 of, and to add Section 2088 to, the Business and Professions Code, relating to medicine.

### LEGISLATIVE COUNSEL'S DIGEST

AB 501, as amended, Emmerson. Physicians and surgeons.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law makes it a misdemeanor for a person who is not licensed as a physician and surgeon under the act to use certain words, letters, and phrases or any other terms that imply that he or she is authorized to practice medicine as a physician and surgeon.

This bill would authorize certain persons who are not licensed as physicians and surgeons under the act to use the words “doctor” or “physician,” the letters or prefix “Dr.,” or the initials “M.D.,” as specified.

Existing law authorizes the board to issue a probationary license subject to specified terms and conditions, including restrictions against engaging in certain types of medical practice. Existing law authorizes a licensee who demonstrates that he or she is unable to practice medicine due to a disability to request a waiver of the license renewal fee. Under existing law, a licensee granted that waiver is prohibited from practicing

medicine until he or she establishes that the disability no longer exists or signs an agreement, under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician. *Existing law authorizes the board to commence disciplinary actions relating to physicians and surgeons including, but not limited to, unprofessional conduct, as defined, and to issue letters of reprimand, and suspend and revoke licenses.*

This bill would authorize an applicant for a license who is otherwise eligible for a license but is unable to practice some aspects of medicine safely due to a disability to receive a limited license if the applicant pays the license fee and signs an agreement, ~~under penalty of perjury, agreeing to limit his or her practice in the manner prescribed by the reviewing physician and agreed to by the board. By requiring that the agreement be signed under penalty of perjury, the bill would expand the scope of a crime, thereby imposing a state-mandated local program.~~ *The bill would provide that any person who knowingly provides false information in this agreement shall be subject to any sanctions available to the board.* The bill would authorize the board to require the applicant to obtain an independent clinical evaluation of his or her ability to practice medicine safely as a condition of receiving the limited license.

Under existing law, licensees of the board are required to pay licensure fees, including an initial licensing fee of \$790 and a biennial renewal fee of \$790. Existing law authorizes the board to increase those fees in certain circumstances and states the intent of the Legislature that, in setting these fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board equal to 2 months' operating expenditures.

This bill would require those fees to be fixed by the board at a maximum of \$790, while retaining the authority of the board to raise those fees in certain circumstances. The bill would state the intent of the Legislature that, in setting those fees, the board seek to maintain a reserve in the Contingent Fund of the Medical Board in an amount not less than 2 nor more than 4 months' operating expenditures. The bill would also require the ~~Bureau of State Audits~~ *Office of State Audits and Evaluations within the Department of Finance* to commence a preliminary review of the board's financial status by January 1, 2012, and to ~~report its findings and recommendations to the Joint Legislative Audit Committee~~ *make its findings available upon request* by June 1, 2012, as specified.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2054 of the Business and Professions  
2 Code is amended to read:

3 2054. (a) Any person who uses in any sign, business card, or  
4 letterhead, or, in an advertisement, the words “doctor” or  
5 “physician,” the letters or prefix “Dr.,” the initials “M.D.,” or any  
6 other terms or letters indicating or implying that he or she is a  
7 physician and surgeon, physician, surgeon, or practitioner under  
8 the terms of this or any other law, or that he or she is entitled to  
9 practice hereunder, or who represents or holds himself or herself  
10 out as a physician and surgeon, physician, surgeon, or practitioner  
11 under the terms of this or any other law, without having at the time  
12 of so doing a valid, unrevoked, and unsuspended certificate as a  
13 physician and surgeon under this chapter, is guilty of a  
14 misdemeanor.

15 (b) A holder of a valid, unrevoked, and unsuspended certificate  
16 to practice podiatric medicine may use the phrases “doctor of  
17 podiatric medicine,” “doctor of podiatry,” and “podiatric doctor,”  
18 or the initials “D.P.M.,” and shall not be in violation of subdivision  
19 (a).

20 (c) Notwithstanding subdivision (a), any of the following  
21 persons may use the words “doctor” or “physician,” the letters or  
22 prefix “Dr.,” or the initials “M.D.”:

23 (1) A graduate of a medical school approved or recognized by  
24 the board while enrolled in a postgraduate training program  
25 approved by the board.

26 (2) A graduate of a medical school who does not have a  
27 certificate as a physician and surgeon under this chapter if he or  
28 she meets all of the following requirements:

1 (A) If issued a license to practice medicine in another  
2 jurisdiction, has not had that license revoked or suspended by any  
3 jurisdiction.

4 (B) Does not otherwise hold himself or herself out as a physician  
5 and surgeon entitled to practice medicine in this state except to  
6 the extent authorized by this chapter.

7 (C) Does not engage in any of the acts prohibited by Section  
8 2060.

9 (3) A person authorized to practice medicine under Section 2111  
10 or 2113 subject to the limitations set forth in those sections.

11 SEC. 2. Section 2088 is added to the Business and Professions  
12 Code, to read:

13 2088. (a) An applicant for a physician's and surgeon's license  
14 who is otherwise eligible for that license but is unable to practice  
15 some aspects of medicine safely due to a disability may receive a  
16 limited license if he or she does both of the following:

17 (1) Pays the initial license fee.

18 (2) Signs an agreement on a form prescribed by the board, ~~signed~~  
19 ~~under penalty of perjury~~, in which the applicant agrees to limit his  
20 or her practice in the manner prescribed by the reviewing physician  
21 and agreed to by the board.

22 (b) The board may require the applicant described in subdivision  
23 (a) to obtain an independent clinical evaluation of his or her ability  
24 to practice medicine safely as a condition of receiving a limited  
25 license under this section.

26 (c) *Any person who knowingly provides false information in the*  
27 *agreement submitted pursuant to subdivision (a) shall be subject*  
28 *to any sanctions available to the board.*

29 SEC. 3. Section 2435 of the Business and Professions Code is  
30 amended to read:

31 2435. The following fees apply to the licensure of physicians  
32 and surgeons:

33 (a) Each applicant for a certificate based upon a national board  
34 diplomate certificate, each applicant for a certificate based on  
35 reciprocity, and each applicant for a certificate based upon written  
36 examination, shall pay a nonrefundable application and processing  
37 fee, as set forth in subdivision (b), at the time the application is  
38 filed.

39 (b) The application and processing fee shall be fixed by the  
40 board by May 1 of each year, to become effective on July 1 of that

1 year. The fee shall be fixed at an amount necessary to recover the  
2 actual costs of the licensing program as projected for the fiscal  
3 year commencing on the date the fees become effective.

4 (c) Each applicant who qualifies for a certificate, as a condition  
5 precedent to its issuance, in addition to other fees required herein,  
6 shall pay an initial license fee, if any, in an amount fixed by the  
7 board consistent with this section. The initial license fee shall not  
8 exceed seven hundred ninety dollars (\$790). An applicant enrolled  
9 in an approved postgraduate training program shall be required to  
10 pay only 50 percent of the initial license fee.

11 (d) The biennial renewal fee shall be fixed by the board  
12 consistent with this section and shall not exceed seven hundred  
13 ninety dollars (\$790).

14 (e) Notwithstanding subdivisions (c) and (d), and to ensure that  
15 subdivision (k) of Section 125.3 is revenue neutral with regard to  
16 the board, the board may, by regulation, increase the amount of  
17 the initial license fee and the biennial renewal fee by an amount  
18 required to recover both of the following:

19 (1) The average amount received by the board during the three  
20 fiscal years immediately preceding July 1, 2006, as reimbursement  
21 for the reasonable costs of investigation and enforcement  
22 proceedings pursuant to Section 125.3.

23 (2) Any increase in the amount of investigation and enforcement  
24 costs incurred by the board after January 1, 2006, that exceeds the  
25 average costs expended for investigation and enforcement costs  
26 during the three fiscal years immediately preceding July 1, 2006.  
27 When calculating the amount of costs for services for which the  
28 board paid an hourly rate, the board shall use the average number  
29 of hours for which the board paid for those costs over these prior  
30 three fiscal years, multiplied by the hourly rate paid by the board  
31 for those costs as of July 1, 2005. Beginning January 1, 2009, the  
32 board shall instead use the average number of hours for which it  
33 paid for those costs over the three-year period of fiscal years  
34 2005–06, 2006–07, and 2007–08, multiplied by the hourly rate  
35 paid by the board for those costs as of July 1, 2005. In calculating  
36 the increase in the amount of investigation and enforcement costs,  
37 the board shall include only those costs for which it was eligible  
38 to obtain reimbursement under Section 125.3 and shall not include  
39 probation monitoring costs and disciplinary costs, including those  
40 associated with the citation and fine process and those required to

1 implement subdivision (b) of Section 12529 of the Government  
2 Code.

3 (f) Notwithstanding Section 163.5, the delinquency fee shall be  
4 10 percent of the biennial renewal fee.

5 (g) The duplicate certificate and endorsement fees shall each  
6 be fifty dollars (\$50), and the certification and letter of good  
7 standing fees shall each be ten dollars (\$10).

8 (h) It is the intent of the Legislature that, in setting fees pursuant  
9 to this section, the board shall seek to maintain a reserve in the  
10 Contingent Fund of the Medical Board of California in an amount  
11 not less than two nor more than four months' operating  
12 expenditures.

13 (i) Not later than January 1, 2012, the ~~Bureau of State Audits~~  
14 ~~(BSA) shall commence a~~ *Office of State Audits and Evaluations*  
15 *within the Department of Finance shall commence a preliminary*  
16 *review of the board's financial status, including, but not limited*  
17 *to, its projections related to expenses, revenues, and reserves, and*  
18 *the impact of the loan from the Contingent Fund of the Medical*  
19 *Board of California to the General Fund made pursuant to the*  
20 *Budget Act of 2008. The BSA shall, on the basis of the review,*  
21 *report its findings and recommendations to the Joint Legislative*  
22 *Audit Committee. The office shall make the results of this review*  
23 *available upon request* by June 1, 2012. This review shall be  
24 funded from the existing resources of the ~~board~~ *office* during the  
25 2011–12 fiscal year.

26 ~~SEC. 4. No reimbursement is required by this act pursuant to~~  
27 ~~Section 6 of Article XIII B of the California Constitution because~~  
28 ~~the only costs that may be incurred by a local agency or school~~  
29 ~~district will be incurred because this act creates a new crime or~~  
30 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
31 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
32 ~~the Government Code, or changes the definition of a crime within~~  
33 ~~the meaning of Section 6 of Article XIII B of the California~~  
34 ~~Constitution.~~